

# Immigration: Registry as Means of Obtaining Lawful Permanent Residence

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## Immigration: Registry as Means of Obtaining Lawful Permanent Residence

Registry is a provision of immigration law that enables certain unauthorized aliens in the United States to acquire lawful permanent resident status. It grants the Attorney General the discretionary authority to create a record of lawful admission for permanent residence for an alien who lacks such a record, has continuously resided in the United States since before January 1, 1972, and meets other specified requirements.

The registry provision originated in a 1929 law. That law set the required entry date from which continuous residence had to be shown (known as the registry date) at June 3, 1921. The registry provision has been amended several times since 1929, most commonly to update the registry date. The first update came in 1940, when the registry date was changed to July 1, 1924. The registry provision underwent significant change in 1958. That year, the registry date was changed to June 28, 1940, and the registry requirements were revised. As a result of the 1958 changes, the registry mechanism became available to aliens who had entered the country illegally or who had overstayed, or violated the terms of, a temporary period of entry. The registry date was subsequently changed to June 30, 1948, and then to January 1, 1972, where it stands today. Since 1985, approximately 60,000 people have adjusted to lawful permanent residence under the registry provision.

Bills to update the registry provision are before the 107th Congress. S. 562 and H.R. 1561 propose to change the registry date to January 1, 1986, while H.R. 500 would change the date to February 6, 1996. These 3 bills also would put in place a “rolling registry date” system, under which the registry date would advance in 1-year increments in each of 5 specified years. Taking a different approach, H.R. 2713 would require a minimum 15-year gap between entry into the United States and the filing of a registry application. Thus, if H.R. 2713 went into effect in 2001, individuals residing here since 1986 would be eligible for registry. INS estimated last year that if the registry date were advanced to 1986, as many as 500,000 undocumented aliens in the United States could acquire permanent resident status.

There is debate about the merits of advancing the registry date. Supporters maintain that long-time immigrants with strong ties to the country should be allowed to become lawful permanent residents. Opponents argue that aliens in the country illegally should not be rewarded with legal status and that advancing the registry date could encourage future illegal immigration.

Registry can be viewed as a form of amnesty for long-term unauthorized residents of the United States. It differs in notable ways, however, from other mechanisms through which unauthorized aliens have acquired lawful permanent residence, such as the general legalization program enacted as part of the 1986 Immigration Reform and Control Act.

This report will be updated as significant developments occur.

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## Introduction

An immigration provision known as registry provides a mechanism for certain unauthorized aliens in the United States to acquire lawful permanent resident status. The registry provision is codified at § 249 of the Immigration and Nationality Act (INA) of 1952, as amended.<sup>1</sup> Section 249 grants the Attorney General the discretionary authority to create a record of lawful admission for permanent residence for an alien who lacks such a record, has continuously resided in the United States since before January 1, 1972, and meets other specified requirements. Because it requires continuous residence since before 1972, the registry provision has limited applicability today. Bills before the 107<sup>th</sup> Congress propose to advance the registry date and make other changes to the registry provision.

## Current Registry Provision

The current registry provision (INA § 249) permits the Attorney General to make a record of lawful admission for permanent residence for an alien, if no such record is available and the alien meets certain conditions. The alien applying for registry must show that he or she –

- is not inadmissible as a participant in Nazi persecutions or genocide or on grounds related to “criminals, procurers and other immoral persons, subversives, violators of the narcotics laws or smugglers of aliens”;<sup>2</sup>
- entered the United States before January 1, 1972;
- has had continuous residence in the United States since that entry;
- has good moral character;
- is not ineligible for citizenship; and
- is not deportable for engaging in terrorist activities.

Registry is a form of relief granted at the discretion of the Attorney General. As such, applicants meeting its statutory requirements are not entitled to relief automatically. If an alien’s application for registry is approved, a record is made showing that the alien was lawfully admitted for permanent residence. For aliens whose entry occurred prior to July 1, 1924, lawful permanent residence is granted as

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<sup>1</sup>Act of June 27, 1952, ch. 477; 66 Stat. 163; 8 U.S.C. 1101 *et seq.* INA is the basis of current immigration law. Section 249 can be found at 66 Stat. 219; 8 U.S.C. 1259.

<sup>2</sup>It is possible for a registry applicant to obtain a waiver of certain grounds of inadmissibility. See 8 C.F.R. 249.1.

of their date of entry. For others, the grant of permanent residence is as of the application approval date.

## **Legislative History**

The registry provision of INA § 249 originated in a 1929 immigration law.<sup>3</sup> An earlier immigration law of 1906 had established a Bureau of Immigration and Naturalization and charged the bureau with providing at U.S. immigration stations “books of record, wherein the commissioners of immigration shall cause a registry to be made in the case of each alien arriving in the United States ... of the name, age, occupation ... and date of arrival of said alien ....”<sup>4</sup> The 1929 law extended this concept of registering new arrivals to permit the registry of “any alien not ineligible to citizenship in whose case there is no record of admission for permanent residence,” provided that the alien satisfied certain requirements. This original registry provision required the alien to show the following: the alien entered the United States prior to June 3, 1921; the alien has continuously resided in the United States since entry; the alien is a person of good moral character; and the alien is not subject to deportation. The law further stated that for purposes of U.S. immigration and naturalization laws, an alien for whom a registry record has been made shall be considered to have been lawfully admitted for permanent residence as of the entry date.<sup>5</sup>

The registry provision has been reviewed periodically since 1929. It has been amended on several occasions, most commonly to advance the required entry date from which continuous residence must be shown. This required date is referred to as the registry date. A 1938 report prepared by the Administration of President Franklin Roosevelt, which proposed a revision and codification of U.S. nationality laws, recommended that the registry provision be retained, but that the registry date be changed to July 1, 1924, the effective date of the then-prevailing Immigration Act of 1924.<sup>6</sup> The report provided the following rationale for the proposed date change:

This would include a number of aliens of good moral character, who have resided in the United States for more than 10 years, and are not subject to deportation, but who cannot proceed toward naturalization because of a lack of a sufficient record of arrival. It is not in the best interests of the United States that there should be a considerable number of aliens here who have resided in this country for many years and who are otherwise eligible for naturalization and anxious to become citizens, but who are prevented from doing so because of the absence of a record of arrival upon which to base a petition for naturalization.<sup>7</sup>

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<sup>3</sup>Act of March 2, 1929, ch. 536; 45 Stat. 1512.

<sup>4</sup>Act of June 29, 1906, ch. 3592; 34 Stat. 596.

<sup>5</sup>45 Stat. 1513.

<sup>6</sup>U.S. Congress, House Committee on Immigration and Naturalization, *Nationality Laws of the United States*, committee print, 76<sup>th</sup> Cong., 1<sup>st</sup> Sess. (Washington: GPO, 1939), p. 40-41.

<sup>7</sup>*Ibid.*, p. 41.

The subsequent Nationality Act of 1940 codified U.S. nationality laws, including the registry provision.<sup>8</sup> As proposed by the Roosevelt Administration, the registry date was advanced to July 1, 1924.

In the late 1940s, the registry provision was again examined as part of a general investigation of the U.S. immigration system conducted by a subcommittee of the Senate Judiciary Committee. The subcommittee recommended that the registry provision be retained.<sup>9</sup> When U.S. immigration and nationality laws were recodified and revised with the enactment of the INA of 1952, a rephrased registry provision became § 249. The registry date remained July 1, 1924.

## **1958 Act**

The registry requirements underwent significant change in 1958. A law enacted that year advanced the registry date to June 28, 1940. It also eliminated the requirement that an alien applying for registry not be subject to deportation. Instead, it required that the alien not be inadmissible under INA § 212(a) “insofar as it relates to criminals, procurers and other immoral persons, subversives, violators of the narcotics laws or smugglers of aliens.”<sup>10</sup> By eliminating deportability as a bar to registry, the registry mechanism became available to aliens who had entered the country illegally or who had overstayed, or violated the terms of, a temporary period of entry.

According to the very similar Senate and House Judiciary Committee reports on this legislation, these changes to the registry provision were prompted by “the growing concern of the Congress with numbers of private bills proposing the granting of permanent residence to aliens who have had long periods of residence.”<sup>11</sup> The Senate report further stated:

In view of the diminishing potential of aliens eligible to seek benefits under section 249 of the Immigration and Nationality Act, it is believed an amendment of this section to extend the date of required entry and enlarge the scope of authority to permit discretionary consideration of the adjustment of status of aliens

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<sup>8</sup>Act of October 14, 1940, ch. 876, § 328(b); 54 Stat. 1137, 1152.

<sup>9</sup>U.S. Congress, Senate Committee on the Judiciary, *The Immigration and Naturalization Systems of the United States*, report pursuant to S.Res. 137, 81<sup>st</sup> Cong., 2<sup>nd</sup> Sess., S.Rept. 81-1515, p. 609.

<sup>10</sup>P.L. 85-616, August 8, 1958; 72 Stat. 546.

<sup>11</sup>U.S. Congress, Senate Committee on the Judiciary, *Recording the Lawful Admission for Permanent Residence of Certain Aliens Who Entered the United States Prior to June 28, 1940*, report to accompany H.R. 11874, 85<sup>th</sup> Cong., 2<sup>nd</sup> Sess., S.Rept. 85-1905, p. 2 (Hereafter cited as Senate Committee on the Judiciary, S.Rept. 85-1905); U.S. Congress, House Committee on the Judiciary, *Recording the Lawful Admission for Permanent Residence of Certain Aliens Who Entered the United States Prior to June 28, 1940*, report to accompany H.R. 11874, 85<sup>th</sup> Cong., 2<sup>nd</sup> Sess., H.Rept. 85-1727, p. 2 (Hereafter cited as House Committee on the Judiciary, H.Rept. 85-1727).

who are subject to deportation on generally technical grounds only would be justified.<sup>12</sup>

A letter from the U.S. Deputy Attorney General to the Chairman of the House Judiciary Committee, which was printed in both the Senate and House reports, expressed Administration support for the bill. It stated that the bill's objective coincided with the "program of the President in respect to the conferral of discretionary authority upon the Attorney General to adjust the status of aliens in the United States who are found worthy of that privilege."<sup>13</sup>

While endorsing an expansion of the registry provision, the Senate and House Judiciary Committees also suggested concerns in their reports about possible abuses of an updated registry mechanism. These concerns were reflected in their choice of June 28, 1940, as the new registry date:

It is not considered to be desirable to advance the required entry date beyond June 28, 1940, the date of enactment of the Alien Registration Act ..., which inaugurated the requirement for registration of aliens seeking visas, and also directed the registration of all aliens within the United States. The possibility that an alien chose to enter illegally after the date of enactment of the Alien Registration Act in order to avoid identification through the registration and fingerprinting data cannot be disregarded.<sup>14</sup>

## **Post-1958 Changes**

Following passage of the 1958 act, the registry date was changed twice more. With enactment of a 1965 law to amend the INA, the registry date was changed to June 30, 1948.<sup>15</sup> Twenty-one years later, as part of the Immigration Reform and Control Act (IRCA) of 1986, the registry date was advanced to January 1, 1972, where it stands today.<sup>16</sup>

Laws enacted in 1988, 1990, and 1996 restricted the availability of registry. The Immigration Technical Corrections Act of 1988 added the requirement that applicants for registry not be inadmissible as participants in Nazi persecution or genocide.<sup>17</sup> The Immigration Act of 1990 made registry and the other specified forms of relief unavailable for 5 years to aliens who, despite proper notice, failed to appear for

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<sup>12</sup> Senate Committee on the Judiciary, S.Rept. 85-1905, p. 2. (House Committee on the Judiciary, H.Rept. No. 1727, p. 2, contains very similar language.)

<sup>13</sup> S.Rept. 85-1905, p. 3; H.Rept. 1727, p. 3.

<sup>14</sup> S.Rept. 85-1905, p. 2-3. (H.Rept. 85-1727, p. 2, contains very similar language.)

<sup>15</sup> P.L. 89-236, § 19, October 3, 1965; 79 Stat. 911, 920.

<sup>16</sup> P.L. 99-603, § 203, November 6, 1986; 100 Stat. 3359, 3405. Senate and House reports associated with the 1965 and 1986 statutes do not indicate the reasons for advancing the registry date in either case.

<sup>17</sup> P.L. 100-525, § 2(j), October 24, 1988; 102 Stat. 2609, 2612.

deportation, for asylum hearings, or for certain other immigration proceedings.<sup>18</sup> The Antiterrorism and Effective Death Penalty Act of 1996 precluded from registry, applicants who were deportable for engagement in terrorist activities.<sup>19</sup>

**Numbers Adjusted Under Registry.** Table 1 shows the number of people who have adjusted to permanent resident status under the registry provision each fiscal year since 1985. The enormous increase in adjustments between FY1986 and FY1987 corresponds to the change in the registry date from June 30, 1948, to January 1, 1972. As shown, the number of adjustments peaked in 1989 and has declined steadily since then. Between FY1985 and FY1998, some 60,000 people acquired lawful permanent residence under the registry provision.

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<sup>18</sup>P.L. 101-649, § 545(a), November 29, 1990; 104 Stat. 4978, 5061, 5064.

<sup>19</sup>P.L. 104-132, § 413(e), April 24, 1996; 110 Stat. 1214, 1269.



**Table 1. Adjustments Under Registry Provision, 1985-1998**

<b>Fiscal Year</b>	<b>Number of Persons</b>
1985	89
1986	73
1987	8,153
1988	40,029
1989	1,060
1990	4,651
1991	2,289
1992	1,304
1993	947
1994	671
1995	469
1996	362
1997	195
1998	176
<b>1985-1998</b>	<b>60,468</b>

**Source:** *Statistical Yearbook of the Immigration and Naturalization Service, 1987-1998, Tables 4, 5.*

## Legislation in the 106<sup>th</sup> Congress

Multiple bills to advance the registry date were introduced in the 106<sup>th</sup> Congress, but none were enacted. These bills variously proposed to change the registry date to January 1, 1982 (H.R. 3149), January 1, 1984 (S. 1552), and January 1, 1986 (H.R. 4138, H.R. 4172, H.R. 4200, S. 2407, S. 3068, S. 3095). H.R. 4138 and H.R. 4172, nearly identical bills, were introduced on behalf of the Clinton Administration. In addition to establishing a new registry date of 1986 upon enactment, S. 2407, S. 3068, and S. 3095 would have instituted a “rolling registry date” system to advance the registry date in 1-year increments in each of the 5 years from 2002 to 2006. Thus, on January 1, 2002, the registry date would have advanced from January 1, 1986, to January 1, 1987. These annual adjustments would have continued until January 1, 2006, when the registry date would have advanced from January 1, 1990, to January 1, 1991. No actions except committee referrals or placement on the Senate calendar occurred on any of these bills. Some members attempted to attach a registry date

provision, as part of a larger package of amendments, to legislation concerning nonimmigrant professional specialty (H-1B) workers, but these efforts were unsuccessful.

## **Registry and IRCA Legalization**

The Clinton Administration supported advancing the registry date to January 1, 1986. It viewed such a change as a way to both provide humanitarian relief to long-time residents and address another immigration matter – litigation related to the general legalization program included in IRCA. That time-limited legalization program, codified at § 245A of the INA, enabled certain illegal aliens who entered the United States before January 1, 1982, to become lawful permanent residents. Several class action lawsuits challenged various regulations adopted by INS to implement the legalization program as being improperly restrictive. As part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Congress placed jurisdictional limitations on challenges to the legalization program<sup>20</sup> in an effort, according to the conference report on the IIRIRA bill, “to put an end to litigation seeking to extend the amnesty provisions of [IRCA].”<sup>21</sup> Since enactment, this IIRIRA provision (§ 377) had been criticized by some who saw it as preventing aliens from pursuing legitimate claims in court.

Although the 106<sup>th</sup> Congress did not enact a registry bill, it did address the legalization program litigation issue in other legislation. The Legal Immigration Family Equity Act (LIFE), enacted as part of the District of Columbia Appropriations Act for FY2001,<sup>22</sup> and the LIFE Act Amendments of 2000, enacted as part of the Consolidated Appropriations Act for FY2001,<sup>23</sup> amended § 245A of the INA to permit class members in specified lawsuits to adjust to permanent resident status.

## **Legislation in the 107th Congress**

Several registry bills are before the 107<sup>th</sup> Congress. Two of these bills – the “Working Families Registry Act” (S. 562) introduced by Senator Harry Reid and the “Date of Registry and Legal Amnesty Restoration Act of 2001” (H.R. 1561) introduced by Representative Sheila Jackson-Lee – are identical except for their short titles. They propose to change the registry date to January 1, 1986. They also would put in place a “rolling registry date” system like that described above, under which the registry date would advance in 1-year increments in each of the 5 years from 2002 to 2006. H.R. 500, a broad immigration bill sponsored by Representative Luis Gutierrez, would change the registry date to February 6, 1996, and would establish

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<sup>20</sup>IIRIRA is Division C of P.L. 104-208, September 30, 1996; 110 Stat. 3009. The IIRIRA provision limiting litigation (§ 377) is at 110 Stat. 3009-649.

<sup>21</sup> U.S. Congress, Conference Committees, *Illegal Immigration Reform and Immigrant Responsibility Act* of 1996, conference report to accompany H.R. 2202, 104<sup>th</sup> Cong., 2<sup>nd</sup> Sess., H.Rept. 104-828, p. 230.

<sup>22</sup>P.L. 106-553, December 21, 2000; 114 Stat. 2762, 2762A-142.

<sup>23</sup>P.L. 106-554, December 21, 2000; 114 Stat. 2763, 2763A-324.

a rolling registry date that would advance 1 year in each of the years from 2003 to 2007. In addition, H.R. 500 would provide for the confidentiality of information furnished in a registry application, and would prohibit specified “violations incidental to undocumented status,” including immigration-related document fraud, from affecting such an application. H.R. 2713, sponsored by Representative Maxine Waters, takes a different approach to updating the registry provision. Rather than setting a new registry date, it effectively would establish an ongoing rolling registry date by enabling individuals to file registry applications 15 years after entry. Thus, if H.R. 2713 went into effect in 2001, individuals who entered the United States in or before 1986 and have resided here continuously since then would be eligible for registry. In 2002, those with continuous residence since 1987 would be eligible for registry. S. 562 has been referred to the Senate Judiciary Committee. H.R. 1561, H.R. 500, and H.R. 2713 have been referred to the House Judiciary Committee.

### **Numbers Affected by Registry Date Change**

It is uncertain how many individuals would benefit from the proposed registry date changes. INS estimated last year that if the registry date were advanced to 1986, as many as 500,000 undocumented aliens in the United States could acquire lawful permanent residence.

### **Pro/Con Arguments**

The merits of advancing the registry date is a subject of debate. Supporters argue that changing the registry date would provide humanitarian relief to long-time residents with strong ties to the country. In his introductory remarks on S. 562, Senator Reid stated:

In my home state of Nevada I have met with people who everyday fear being deported and separated from their families. They are married to Americans, have American children and have worked and been paying taxes for many years.<sup>24</sup>

Along similar lines, Kevin Appleby of the United States Catholic Conference believes that “those who would be benefitted by this [change of the registry date to 1986] have worked hard, contributed to their communities and deserve an opportunity to stay here.”<sup>25</sup>

Supporters also cite more practical considerations for advancing the registry date. They maintain that long-time residents are highly unlikely to leave and that it is in the nation’s economic and social interest to more fully integrate them into society as legal residents. In addition, supporters argue that there is a large and growing gap

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<sup>24</sup>Senator Harry Reid, remarks in the Senate, *Congressional Record*, daily edition, vol. 147, March 19, 2001, p. S. 2474.

<sup>25</sup>Quoted in Antonio Olivio, “Another Chance at Amnesty,” *Los Angeles Times*, April 28, 2000, p. B2.

between the registry date and the current year (amounting to 29 years in 2001), and that it is time to advance the registry date and reduce that gap.

Opponents of proposals to make long-term aliens eligible for lawful permanent residence by changing the registry date (or by other means) emphasize that the potential beneficiaries are in the United States illegally. They argue that such illegal aliens should not be given amnesty. According to Daniel Stein of the Federation for American Immigration Reform:

When you're giving [illegal aliens] amnesty, you're rewarding them by giving them what they broke the law for. It's like telling the bank robber, "Not only are we not going to prosecute you, you're going to keep the money."<sup>26</sup>

In the view of opponents, an amnesty would undermine efforts to control illegal immigration into the United States and would actually encourage more such immigration in the future.

Another key concern of opponents is that granting legal status to large numbers of illegal aliens could hurt U.S. workers by increasing competition for certain jobs. In the event of a subsequent economic downturn, some fear a potential large-scale backlash against immigrants.

## **Registry as Form of Amnesty**

Registry can be viewed as a form of amnesty for long-term unauthorized residents of the United States.<sup>27</sup> It differs in notable ways, however, from other mechanisms through which unauthorized aliens have acquired lawful permanent residence. A brief comparison of registry and the Section 245A legalization program, discussed above, highlights the distinguishing features of registry. Registry is an ongoing provision, while the Section 245A legalization program was a one-time event. Thus, registry can be applied for at anytime, while the legalization program had time-limited application periods.

The applicable continuous residence requirements represent another key difference between registry and the Section 245A legalization program. The current registry provision requires the alien to have had continuous residence in the United States since before 1972. It does not matter whether the alien was in a lawful or unlawful immigration status. By contrast, the Section 245A legalization program required the alien to have had continuous *unlawful* presence since before 1982. It also required continuous physical presence in the country since before November 6, 1986, the enactment date of IRCA.

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<sup>26</sup>Quoted in Carla Marinucci, "In California, Little Consensus on Immigration Proposal," *San Francisco Chronicle*, April 13, 2000, p. A3.

<sup>27</sup>For a discussion of legalization-related issues and legislation, see CRS Report RL30780, *Immigration Legalization and Status Adjustment Legislation*, by Ruth Ellen Wasem.

Another important difference between the provisions concerns the eligibility requirements related to inadmissibility. Registry applicants must not be inadmissible on certain criminal or other specified grounds. Legalization applicants faced stricter requirements. They were subject to the full range of inadmissibility grounds under INA § 212(a), with some exceptions. Legalization applicants were also subject to several additional grounds of disqualification. Among them, the alien had to establish that he or she had not been convicted of any felony or of three or more misdemeanors in the United States.

Finally, registry is a form of relief granted at the discretion of the Attorney General. Applicants meeting its statutory requirements are not entitled to relief automatically. Under the Section 245A program, by contrast, legalization was mandatory if the alien satisfied the eligibility requirements.

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